IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2774 of 2006 (O&M)
Date of decision: September 22, 2006.

Jagdev Singh & Ors.

...**Appellant(s)**

v.

Kapoor Singh & Anr.

...**Respondent(s)**

Present: Shri A.S. Jattana, Advocate for the applicant-appellants.

Surya Kant, J. (Oral)

C.M. No.6685-C of 2006

The prayer in this application is for condonation of delay of 2659 days in filing of the accompanying regular second appeal.

Two cross civil suits were filed – one by the applicant-appellants and the other by the respondents. The civil suit filed by the respondents was decreed by the learned Additional Civil Judge (Senior Division), Malerkotla vide his judgment and decree dated 27.2.1998. Aggrieved, the applicant-appellant No.1 and predecessor-in-interest of applicant-appellants No.2 and 2 (Puran Singh) filed Civil Appeal No.73 dated 7.4.1998. The said appeal was dismissed by the learned Additional District Judge, Sangrur vide his judgment and decree dated 11.3.1999.

Further aggrieved, the applicant-appellants have filed the accompanying regular second appeal and for condonation of delay in filing thereof, the present application has been moved by them.

As per the averments made in this application, "the appellants came to know on 17.4.12006 from the Patwari, that appeal filed by you has been dismissed and judgment dated 27.2.1998 has also been set aside by the learned Additional District Judge, Sangrur in the same order...". It is further averred that the appellants immediately applied for a copy of the aforesaid judgment on 18.4.2006 which was prepared and delivered to them on 19.4.2006 and in this manner, "the present appeal is within time from the date of knowledge". According to the applicant-appellants, "this delay is not intentional and deliberate, but has been occurred due to lack of information". On this premise, the applicants-appellants want this court to condone the delay in filing the accompanying appeal.

At this stage, it may be mentioned that as per the note of the Registry, this appeal was filed on July 13, 2006.

Undoubtedly, upon showing a "sufficient cause" to its satisfaction, an appellate court, in exercise of its powers under Section 5 of the Limitation Act, 1963, can condone the delay. The expression "sufficient cause" has received a liberal construction so as to advance the cause of substantial justice. However, the wide import received by this expression is always guided by three well settled principles, namely, (i) there was no negligence on the part of the party; (ii) there is no inaction on its part; and (iii) want of *bona fide* is not imputable to the party. An appellate court would also keep in mind that if a vested right has accrued in favour of the opposite party, the same cannot be taken away lightly unless the "sufficient cause" is of such a strong magnitude that if the delay is not condoned, it will defeat the very cause of substantial justice.

From the averments made in this application, the relevant parts

of which have been produced in *extenso*, it can be seen that the so-called 'sufficient cause' shown by the applicant-appellants is totally vague, wild and evasive. Admittedly, the first appeal was filed by them by engaging a counsel. The impugned judgment was passed by the first appellate court in the presence of their counsel. There is not even a whisper in the application as to why the applicant-appellants did not contact the learned counsel. It is not their case that their counsel committed any professional misconduct either by misleading them and/or by concealing the material information.

Some degree of vigilance and diligence is always expected from a litigant. In a given case, assuming the lawyer failed to discharge his professional duty and did not inform the party regarding the fate of its case, it is not expected of the litigant that he would sleep over the matter for years together. In the instant case, the first appeal was filed in the year 1998. It can be legitimately expected from the applicants that in the ordinary course also, they would have gone and contacted their counsel to find out the fate of the appeal.

Pertinently, the applicant-appellants have chosen a date, i.e., 17.4.2006 when they allegedly came to know from the Patwari regarding dismissal of their appeal. Who is that Patwari?; how did he come to know about the appeal and why did he not inform the appellants?; or whether or not the appellants earlier met the said Patwari?, are some of the material questions which are not at all explained in the application. The date of “knowledge”, appears to have suddenly come out of the hat.

As the applicant-appellants have miserably failed to show “cause” what to talk of a “sufficient cause” to the satisfaction of this court for condonation of delay, it will be too iniquitous to reopen a settled *lis* in

terms whereof the respondents appear to have acquired possessory and proprietary rights over the subject property from last so many years. The said right of the respondents cannot be lightly jeopardized by this Court at this stage.

Consequently, and for the reasons aforementioned, I do not find any ground to condone the delay of 2659 days in filing of the accompanying appeal. Accordingly, the application is dismissed. As a result thereof, the accompanying appeal is also dismissed.

September 22, 2006. [**Surya Kant**]
kadyan **Judge**